

Family Court Programming:

Case Coordination, Non-Adversarial Dispute Resolution, and Specialized Services

A. Overview

Each of Indiana's family court projects is unique. While the focus of the original pilot counties was on developing models to coordinate the litigation of families who have multiple cases in the court system, the Family Court Project has subsequently embraced a wide range of programming to meet the needs of children and families in the court system. Experience has shown that both large and small counties have a need for, and can develop, some aspect of case coordination and service delivery to better serve families. The Indiana Family Court Project is not locked into any one case coordination model or service program. It offers a variety of program and process options, and the opportunity to develop a more cooperative, "family focused" approach for serving families and children.

Moreover, the case coordination and other programming are flexible and easily transferable to new pilot counties. The models developed by the original pilot counties serve as a base to build on, but each county adapts the framework to its needs, resources and legal culture. The pilot county projects are not static. The counties delete or add programming as their needs and resources change. They transfer existing programs in or out of pilot projects as it seems appropriate to their overall family court approach.

B. Case Coordination Models for Multiple Case Families

1. Why is Case Coordination Needed?

The impetus for the Family Court Project was the need to coordinate the litigation of families who have more than one case pending in the legal system. Statistics and anecdotal experience from the pilot projects, as well as national research, confirm the existence of significant numbers of families who have multiple cases in the court system, and the potential harms from failing to coordinate these cases.

a. The Incidence of Multiple Case Families and Most Common Case Types

An underlying assumption of the Indiana Family Court Project is that multiple case families exist in significant enough numbers to warrant specialized court processing. The data in Table 9 show that families assigned to the pilot projects do have a significant incidence of multiple cases.

Table 9: Number of Court Cases Per Family in Project Counties

| | 2000 Families | 2000 Cases | 2001 Families | 2001 Cases | 2002 Families | 2002 Cases | Total Families | Total Cases | Average cases Per Family |
|----------------|------------------|---------------|------------------|---------------|------------------|---------------|-------------------|----------------|-----------------------------|
| Phase 1 | | | | | | | | | |
| Johnson | 37 | 93 | 44 | 124 | 42 | 104 | 123 | 321 | 2.609 |
| Monroe | 23 | 91 | 25 | 81 | 28 | 63 | 76 | 235 | 3.092 |
| Porter | 40 | 176 | 61 | 231 | 27 | 81 | 128 | 488 | 3.81 |
| Phase 2 | | | | | | | | | |
| Putnam | 11 | 17 | 49 | 57 | 42 | 49 | 102 | 125 | 1.22 |
| Owen | | | | | 4 | 4 | 4 | 4 | 1 |
| Boone | | | | | 26 | 69 | 26 | 69 | 2.65 |
| Montgomery | | | | | 12 | 59 | 12 | 59 | 5.92 |
| LaPorte | | | | | 42 | 249 | 42 | 249 | 5.72 |
| Marion | | | | | 51 | 202 | 51 | 202 | 3.96 |
| Totals | 111 | 377 | 180 | 493 | 274 | 880 | 565 | 1,750 | 3.09 |

The pilot project families average between 2.65 court cases per family in Boone County to 5.92 cases per family in Montgomery County, with the

mode for the seven largest pilot counties being 3.78 cases per family. This calculation does not include the smallest counties of Putnam and Owen that focus primarily on non-adversial dispute resolution.

The data in Table 9 does not show the total number of multiple case families within each court system, or in other words, how often all families (not just pilot project families) have more than one case in the court system. The Monroe County family court project conducted a study to address that issue. In 2000, Bonnie Austin in the Administrator's office of the Monroe County Circuit Court conducted a base line study to determine the number of current and disposed cases for each family in the forty-one new CHINS (Child In Need of Services) cases filed over a six month period beginning in September of 1999. The study required Ms. Austin to review the CHINS records and other information sources to determine the exact names (and other identifiers such as date of birth, social security, and address) of each family member for the subject CHINS child, and then to research the separate juvenile, civil, and criminal databases to see if those persons had pending cases in the court system or cases that had been disposed since 1993. The results showed that four of the families had only one case pending in the Monroe Court system, but the remaining families had between three to six cases pending. These pending cases included divorce, paternity, delinquency, protective orders, guardianships, criminal, and additional CHINS cases. Also, most of the families had substantial numbers of cases that had been disposed between 1993 and 2000. Three families had only one disposed case, but most of the families had five or more disposed cases and five families had eleven or more disposed cases.

Monroe County's data is not inconsistent with the 1992 research conducted in Oregon by the National

Center for State Courts, in which the authors concluded:

*...there are a sufficient number of related cases involving families to warrant the effort necessary to coordinate case processing. Court records in three different sites found that 41 percent of cases involving families had related cases. Obviously this proportion depends on how one defines a related case and how far back in time one looks, but there is no doubt that the proportion of related cases is high.*¹¹

Hunter Hurst III, director of the National Center for Juvenile Justice, reported that in a random sample of 440 divorce, dependency and delinquency cases in Salt Lake County, Utah, a total of 53% or 235 of those 440 cases had had a related family case of some other type within the past five years. He noted that those 235 cases had a total of 419 related cases.¹²

The results of the written surveys of three hundred Indiana judges and attorneys provide anecdotal evidence regarding the incidence of multiple case families. The research was conducted by family law expert Jeffrey Kuhn in the spring of 2001 as a part of an independent evaluation of the Indiana Family Court Project. The survey responses showed that many Indiana judicial officers and attorneys perceive that the litigants and clients they serve have a significant likelihood of being involved in other pending litigation.¹³

Additionally, site interviews in Indiana's pilot counties consistently included real life examples from attorneys, judges, CASAs, and service providers about families with multiple pending cases.

Table 10 shows the Indiana pilot project data on the types of cases that most frequently occur in multiple case families.

¹¹ Victor E. Flango, "Creating Family Friendly Courts: Lessons from Two Oregon Counties," 34 *Family Law Quarterly* 118 (Spring 2000).

¹² Hunter Hurst III, "Judges in Musical Chairs: Bad News for One Family/One Judge," *Juvenile and Family Justice Today* 37 (summer 1998).

¹³ See Chapter 4 of this report at section B. 1 for further discussion of the survey results.

Table 10: Most Common Case Types in Multiple Case Families

| | Johnson | Monroe | Porter | Putnam | Boone | Montgomery | LaPorte | Marion | Totals |
|------------------------------|---------|--------|--------|--------|-------|------------|---------|--------|--------|
| CHINS | 60 | 91 | 126 | 12 | 18 | 7 | 55 | 94 | 463 |
| Termination of parental rts. | 9 | 7 | 5 | 3 | 1 | | 1 | | 26 |
| Delinquency | 25 | 12 | 24 | | 2 | 14 | 38 | 3 | 118 |
| Juvenile Status | 1 | | | | 2 | | | 1 | 4 |
| Juvenile Miscellaneous | 6 | | | | 2 | 3 | | | 11 |
| Paternity | 51 | 30 | 23 | | 2 | | 17 | 44 | 167 |
| Guardianship | 22 | 7 | 4 | | 1 | 2 | 1 | | 37 |
| Adoption | 8 | | | | | | | 1 | 9 |
| Divorce | 65 | 37 | 30 | 4 | 1 | 2 | 14 | 24 | 177 |
| Support Enforcement | 36 | | 2 | | | | | | 38 |
| Civil Miscellaneous | | | | | | | 5 | | 5 |
| Civil Protective Order | 32 | 8 | 21 | | 1 | 1 | 7 | 16 | 86 |
| Domestic Violence Crimes | | | 78 | 1 | 7 | 2 | | 11 | 99 |
| All other Crimes | 2 | 25 | 123 | 2 | 22 | 23 | 68 | 8 | 273 |
| Other | 3 | 3 | | | 1 | 5 | 5 | | 17 |

Five of the pilot counties report that CHINS cases are the most common case type in their multiple case families, and three counties report that criminal cases are the most common case type. This variance between the counties may be caused by several factors, but the most significant is whether the counties include criminal cases in their family court projects. Some pilot counties include all of the family's criminal cases, others include some or none. Aside from the CHINS and criminal cases, the other case types that frequently occur in multiple case families are divorce, paternity, delinquency, and protective order cases.

b. Judicial and social harms from lack of case coordination

Regardless of the number of multiple case families, the potential harm and inefficiency in multiple case situations is significant. Failure to

coordinate a family's multiple cases can result in redundancy in hearings, service gaps, and inconsistent orders. Perhaps the most frightening problem is uninformed decision making. For example, if the attorneys or pro se parties choose not to present evidence in the divorce custody case regarding the parents' domestic violence or child neglect cases then the judge who must make the divorce custody decision is probably the least informed person in the courtroom. Indiana law does not authorize the judge on his own motion to take judicial notice of the rulings

from related cases even though the information may be public record.¹⁴

Another problem with multiple case family situations is the potential for jurisdictional and other due process errors, and the resulting waste of judicial time in trying the same issues twice in two related but technically different legal cases.¹⁵

c. At-risk social factors in multiple case families

The pilot counties collected data on each project family on a wide range of social factors relevant to child safety and stability. Counties were not able to obtain data regarding certain social factors for some families. Data collection was not intended to be invasive for families or overly time consuming for the projects. For purposes of the data collection, the family court personnel determined whether the family had a particular social factor based on the pleadings, rulings, or other documents in the

¹⁴ See Chapter 1 of this report at section F.5. for Family Court Rules and case law on judicial notice.

¹⁵ For example, jurisdictional error occurs when an original custody case is heard at the same time a CHINS or delinquency action is pending regarding the same child. This jurisdictional issue is discussed in the text and in footnote 7 in Chapter 1 of this Report at section F.2. on Family Court Rules. Even when there is no jurisdictional problem with multiple cases involving the same child proceeding in different courts at the same time, there can be very detrimental and wasteful effects from this multiple litigation. The Court risks uninformed decision making and the parties face loss of rights when they are not adequately informed of, or allowed to participate in both cases involving the same child. Detrimental multiple litigation occurs, for example, when separate adoption petitions are filed for the same child in two different courts, or an adoption petition and a paternity petition on the same child are filed in two different courts. See *In re Adoption of I. K.E.W.*, 724 N.E.2d 245 (Ind.Ct.App.2000) (trial court not obligated to consolidate competing adoptions involving the same child).

family's multiple court files. Some family court personnel also consulted other available sources of information, such as child abuse or neglect reports or domestic violence police reports forwarded to the pilot project. Social factors were determined by personal contact with family members only in the pilot projects that conducted such interviews.

2. Alternative Models for Case Coordination

The original pilot counties implemented alternative models for coordinating the litigation of families who have more than one case pending in the court system at a time. The case coordination models used by the pilot counties are set out below.

Table 11: Incidence of At-Risk Social Factors in Project Families

| | Johnson | Monroe | Porter | Putnam | Boone | Montgomery | LaPorte | Marion | Owen | Totals |
|-----------------------------|---------|--------|--------|--------|-------|------------|---------|--------|------|--------|
| Substance Abuse | 9 | 31 | 55 | 15 | 13 | 11 | 19 | – | – | 153 |
| Mental Health | 6 | 16 | 18 | 16 | 3 | 1 | 12 | 8 | – | 80 |
| Parent Conflict | 56 | 25 | 79 | – | 2 | 2 | 3 | 12 | 1 | 180 |
| Domestic Violence | 21 | 17 | 62 | – | 7 | 2 | 9 | 13 | 1 | 132 |
| Child Neglect | 11 | 34 | 51 | 8 | 19 | 4 | 17 | 39 | – | 183 |
| Child Abuse | 4 | 26 | 33 | – | 18 | 3 | 19 | – | – | 103 |
| Adult Probation/Jail | – | – | 108 | – | 13 | 6 | 38 | 5 | – | 170 |
| Housing Issues | 4 | 16 | 12 | – | – | – | – | – | – | 32 |
| Low Income | – | 58 | 62 | 37 | – | – | 34 | – | 1 | 192 |
| Single Parent | – | – | 58 | – | – | – | 22 | – | 1 | 81 |
| Education Issues | 2 | 3 | 9 | – | – | – | – | – | – | 14 |
| Child Behavior Issues | 17 | 13 | 12 | – | – | – | – | – | – | 42 |
| Child Out-of-Home Placement | – | – | 33 | – | 16 | 5 | 25 | 41 | – | 120 |
| Juvenile Detention | – | – | 22 | – | 2 | 3 | – | – | – | 27 |

Data on the families admitted into the family court projects demonstrates that these families have a high incidence of social factors that may place their children at-risk for harm or instability, or their children may already be experiencing harm. Although the data does not show the incidence of these risk factors in the total court population, it is still clear that the multiple case families selected for family court processing have a high number of at-risk social factors. Having multiple court cases, in and of itself, may place a family at-risk for instability, given the potential loss of income from multiple court proceedings and attorney fees, and the stress of multiple court orders for services or treatment.

a. One Judge-One Family

(also referred to as case bundling)

The *one family—one judge* model, also referred to as *case bundling*, involves transferring some or all of the family's multiple cases to the same judge, with the goal of expediting scheduling and case resolution for families and attorneys and coordinating orders. The cases are not usually consolidated, but maintain their own separate identities. The judge can use Family Court Rule 4 to take judicial notice of the orders in the family's multiple cases. Custody, visitation, no-contact, and service orders can be fully coordinated.¹⁶ When appropriate, hearings in the family's multiple cases can be scheduled for the same time (concurrent hearings). This avoids multiple trips to the court house for parties and witnesses.

¹⁶ See Chapter 1 of this Report at section F.5. regarding Family Court Rule 4.

When a family is assigned to the family court project using this model, the files of the family's multiple cases are transferred to the same judge in compliance with the Indiana Rules of Trial Procedure and local rules regarding case transfers. The multiple court files are placed in a common folder or rubber banded together, hence the term *bundled*. When one case is scheduled for hearing, the other *bundled* case files are placed before the judge on the bench.

If the family's multiple cases are already before the same judge, *bundling* may still be needed because the cases are not automatically coordinated for purposes of scheduling and consistent resolution. For example, this may occur when the child's CHINS (Child In Need of Services) case and paternity custody case are originally filed in juvenile court before the same judge. If the cases are assigned to the family court project, it is more likely that they will be scheduled for hearings concurrently or consecutively, avoiding multiple trips to the courthouse for the parents. Also, if the multiple cases are both assigned to family court the judge may use Family Court Rule 4 to take judicial notice of the orders in both cases.

The *one family—one judge* model was initially used in Johnson and Monroe Counties, but has been adapted for use in Boone, Montgomery, and Marion Counties. Some of the pilot counties have added innovative aspects to the original model: **(1)** combined status conferences and **(2)** coordinated litigation of the juvenile and criminal cases involving the same incident of child abuse or neglect.

Combined status hearings in family's multiple cases. Johnson County schedules multiple case status hearings within ten days of the transfer of the family's cases to the family court. All the attorneys and necessary parties attend the hearing to identify issues, schedule necessary evaluations or other required processes, check for inconsistent orders between the multiple cases, set future hearing dates, and resolve issues when possible. Boone County also uses status hearings or case conferences in *bundled* cases. While it may be cumbersome to give

notice of the combined status hearing to all the attorneys, pro se parties, and child advocates involved in the cases, the hearing can be a very helpful tool in expediting cases. Much can be accomplished by having the key players for all the cases together in the courtroom at an early point in the litigation.

Bundling criminal and CHINS cases involving same incident of child abuse or neglect. Coordinating the CHINS and criminal cases involving the same incident of child abuse or neglect may include the combined status hearing process discussed above, but it has additional aspects. Dual litigation of CHINS and related criminal cases has long been a sore point in Indiana. Juvenile courts often delay the CHINS case until the criminal case in another court is completed to avoid potential violations of the parent's Fifth Amendment Right to remain silent. The CHINS case waits in limbo while criminal discovery and plea negotiations may proceed slowly. Boone County has addressed this concern through its family court project. When the companion criminal case is filed in the Boone Circuit Court, which already has jurisdiction in the CHINS case, the Circuit Court *bundles* the cases to the family court project to facilitate future coordination of the cases and a combined status hearing. If the criminal case is filed in the Superior Court, the Circuit Court judge *bundles* the criminal and CHINS cases in a family court proceeding and transfers the criminal case to his court. These transfers are made with the agreement of the Superior Court judge and with appropriate notice to the parties. If the CHINS and criminal cases are not resolved in the combined status hearing, the Circuit Court judge hears the cases separately. However, the judge is responsible for both cases and thus has the ability to expedite and coordinate the hearings as appropriate. Nothing in the law prohibits one judge from hearing both cases. There may also be time savings in appointing the same public defender in these multiple cases.

The Monroe County pilot project also *bundles* some criminal and CHINS cases involving the same incident of child abuse and neglect before the same

judge. Johnson County has conducted some combined status hearings on related CHINS and criminal cases, at the request of the attorneys and as deemed appropriate by the family court. In Johnson County if the criminal and CHINS cases are not resolved by agreement in the status hearing, the criminal case is processed before another judge in the criminal court.

The benefits and concerns of combining criminal and civil matters in family court were recently addressed in a 2002 study by the National Center for State Courts.¹⁷

b. Information Sharing Between Multiple Courts

(also referred to as case tracking or one case manager-one family)

In this case coordination model the family's separate cases remain in front of the multiple judges in which they were originally filed. However, all the judges, attorneys, and other significant persons or service providers are given a written report of the family's multiple cases, which may include the cause numbers, hearing dates, party names, and summaries of outstanding orders. The report is called a case management or case coordination report. The report may be placed in the jacket cover of each of the family's multiple case files, or kept in a separate file folder. The individual court case files may also be labeled on the outside with a bright fluorescent sticker to notify the judges that these court cases are part of the family court proceeding. Courts forward copies of their court entries and orders to the family court personnel who update the family court reports before and/or after any hearings in one of the family's cases.

Information sharing between multiple courts is designed to promote more informed decision making, and to thereby avoid inconsistent or redundant orders. It should also facilitate service coordination for the family. Also, using Family Court Rule 4 the judge can take judicial notice of the orders in the family's other cases. Copies of the documents to be judicially noticed must be provided

to the parties.

Porter County has piloted the *information sharing* model with very positive results. It generally calls its pilot program *case tracking* or *one family-one case manager*. The same family court case manager prepares the necessary information sharing documents in all of the family's litigation and keeps the parties and service providers apprised of significant action in the multiple cases as appropriate. Porter County overcame the challenges of record retrieval from multiple court locations through persistence and cooperation with court personnel and the Clerk.

LaPorte County has adopted the *information sharing* model with variations to suit its own needs. The LaPorte family court personnel locate and maintain a copy of all court orders involving the multiple case families so judges and parties can have rapid access to orders from the family's other cases. Marion, Boone, and Montgomery Counties also use some aspects of the *information sharing* model.

c. Which Model of Case Coordination is Best?

In assessing the case coordination models piloted in Indiana, it was not possible to select the *one family-one judge* model or the *information sharing between multiple courts* model as better. Pilot courts appear equally satisfied with whatever model they use. Instead of trying to select one model over the other, the experience of the pilot projects indicates that there are several factors to consider in selecting a model that may be best for a particular community. The project experience also shows that some court systems can use both models, applying the appropriate model on a case-by-case basis. The factors significant to the case coordination models are listed below.

Existing court systems and practices.

Some court systems may not have the flexibility and scheduling freedom required by the *one family-one judge* model, or judges may be concerned

¹⁷ Brenda K. Uekert, et al "Integrating Criminal and Civil Matters in Family Courts: Performance Areas and Recommendations" (National Center for State Courts, 2002). The publication may be obtained from the National Center of State Courts by phone contact at 757-253-2000 or on the Web at www.ncsconline.org.

that case transfers will alter weighted case load plans. Larger court systems may develop judicial economies or practices that are not amenable to the *one family—one judge* model, such as (1) judicial officers specializing in a narrow range of case types or (2) judicial officers conducting specific stages of the litigation in block scheduling (such as conducting all the preliminary, detention, initial, or contempt hearings of a particular case type), rather than hearing cases from start to finish. Given the growing complexity of divorce and juvenile matters, judges who specialize in particular case types may need cross-training to litigate the full breadth of case types, including divorce, paternity, CHINS, delinquency, termination of parental rights, adoption and guardianship. Also, a *one family—one judge* model needs to function out of, or be closely connected to the juvenile court, given the reality in Indiana that juvenile courts tend to have primary access to service systems for children and families (and accountability for those service costs).

Administrative and Judicial Economies.

The *one family—one judge* model may involve significant or little administrative effort to create initially, depending on the formalities involved with transferring a case from one court to another. However, once the case transfers are completed, the *one family—one judge* model may only require minimal administrative activity to maintain. The same judge and the same court staff are responsible for all of the family's files. Also, the *one family—one judge* model may save judicial time through concurrent hearings, and one-judge scheduling may expedite multiple cases through the system. The *information sharing between multiple courts* model, on the other hand, involves ongoing administrative time in obtaining, updating, and distributing case reports and court orders to multiple courts, parties, and service providers. However, it should be considered that the detailed administrative reports on all of the family's litigation used in the *information sharing* model may save judicial time in case coordination. For example, it may be more time efficient and accurate for a judge to reference a detailed case coordination report (as used in the

information sharing model) to check on the status of one of the family's cases than to page through the actual court files to locate pertinent information.

Informed Decision Making, Case Coordination and Consistency.

The *one family—one judge* model would seem to better ensure case consistency and coordination since the rulings in the family's cases are made by the same judge. This model should avoid inconsistent orders. It should also facilitate coordinated service delivery for the family and increase family accountability to the judge regarding the family's "big picture." On the other hand, the frequent updating and redistribution of detailed reports on the multiple case activity in the *information sharing* model may better ensure that lawyers and service providers treating the children or families are more fully informed about the full range of the family's cases.

Perceptions of Fairness and Prejudice

It is suggested that this may be the most important factor regarding case coordination models. In some communities there is a significant sense that a judge will be prejudiced if he hears multiple cases involving the same family and that the judge will not strictly adhere to evidentiary and procedural rules in *bundled* cases. There is a concern that the family's judge might become too lax or personally involved. For example, judicial officers and lawyers in Porter County expressed concern during site visits about the potential sense of impropriety and prejudice in a judge hearing multiple cases involving the same family. However, in other communities the legal bar has a strong sense that the *one family—one judge* model is more efficient for the families and courts. This positive attitude may be affected by the bar's perception of the abilities and fairness of the judicial officer or officers that serve as the family court judge. Lawyers interviewed in Johnson County were not concerned about judicial prejudice. They expressed their opinions that having all the family's litigation in front of one judge saved time for the lawyers and judges and their clients benefitted from coordinated and consistent court orders.

d. Use of Both Case Coordination Models by Pilot Projects

Although the case coordination models have significant differences in purpose and process, a pilot project can use both models, applying the appropriate model on a case-by-case basis. Marion County uses a *one family—one judge* model (most often referred to as *case bundling*) when one of the family's multiple cases is in juvenile court, but uses the *information sharing between multiple courts* model for other multiple case litigation situations.

Although Boone and Montgomery Counties focus primarily on the *one family—one judge* model, they also use the *information sharing between multiple courts* model when this is more appropriate to the needs of the court and the family. Monroe County generally transfers and bundles all of the family's multiple cases before the same judge in Division 7, but not always. If the family's criminal cases are too complex, too close to disposition, or not closely enough related to the rest of the family's litigation, then Monroe County tracks the criminal cases for information purposes, but does not transfer them into the same court.

e. Case Coordination Through Non-Adversarial Dispute Resolution Programming

Non-adversarial dispute resolution can also be a valid form of multiple case coordination. Both Owen and Putnam Counties provide affordable, non-adversarial dispute resolution (which they refer to as facilitation) in CHINS and termination of parental rights cases, pro se paternity and divorce custody cases, and any other appropriate litigation involving families, including multiple cases. The facilitation process is similar to mediation. Both projects use an intake process prior to the facilitation meeting to directly ask the parties if the family has other pending litigation related to the case set for facilitation. When other cases are identified they may be included in the facilitation process for purposes of potential resolution, or as more often happens, information regarding the

related cases is provided to the facilitator and parties to enable more informed decision making. Putnam County has combined the family's multiple CHINS and custody cases in facilitation. It has also been successful in reaching facilitated agreements in situations involving the family's CHINS case and the related criminal child molestation, child battery or child neglect case.

There are serious challenges with mediating criminal and juvenile cases together, and despite Putnam County's success in this area, some pilot counties have not had positive results. However, further innovations should be explored in this area given the potential of mediation to expedite cases and avoid litigation for the child.

A 2001 project report sponsored by the State Justice Institute outlines Wisconsin's successful use of mediation to jointly resolve criminal and civil child protection cases.¹⁸

3. Eligibility Criteria and Court Processing for Multiple Case Families

Once a pilot project selects a model or models of case coordination, the project must set criteria for project eligibility. This is done because not all families need case coordination. The projects also develop standardized processes for identifying appropriate families and assigning their cases to the family court project.

a. "Family" Defined and Eligible Case Types

The pilot projects have adopted flexible definitions of what constitutes a "family." In most projects "family" is determined on a case-by-case basis and may include the custodial and non-custodial parents, putative fathers, step-parents, and legal guardians. It may also include the siblings and significant adults (such as boy/girl friends of parents) who reside in the household with the child or have significant contact with the child.

The court must determine what case types are eligible to be included in the family court project. Most pilot counties include the following case types: divorce and paternity custody and visitation, Child

¹⁸ See John A. Martin and Steve Weller, "Mediated Child Protection Conferencing in Criminal and Civil Child Abuse and Neglect Cases: Lessons from the Wisconsin Unified Family Court Project" (State Justice Institute, April 2001)

in Need of Services (CHINS), termination of parental rights, delinquency, guardianship, adoption, and civil protective orders. Some family court projects also include all of the family's criminal cases, some include specific types of criminal cases that will impact the family's situation such as domestic violence, child sexual offenses, child neglect or abuse, and substance abuse crimes, and some projects include the family's criminal cases on a case-by-case basis. Civil litigation involving family members, such as small claims or evictions, may sometimes be included in the family court process.

Having determined eligible case types, the court may have additional requirements. Generally, the pilot projects require that the family have at least two cases of the eligible case types pending in the court system, and at least one of the cases must involve a child issue. Even though a family may have multiple cases of the types that are eligible for the family court project, limited resources and practicality may require additional screening to determine if assignment to the project will result in greater efficiency and effectiveness for this particular family and the court system.

b. Mechanisms to Identify Multiple Case Families and other Appropriate Families

Each pilot project must determine how it will

identify multiple case families. Table 12 illustrates the various persons in the community who channel families to the pilot project. Below is a discussion of the various methods used by the court and these persons to identify and refer multiple case families to the family court project.

Referral Process. Referral or identification forms can be used for persons to refer themselves or others into the project. The forms may be completed by judicial officers, court staff members, attorneys, pro se parties, law enforcement, probation officers, office of family and children case managers, CASA/GALs, school personnel, or service providers. Referrals may be made by phone, or judges or parties may make oral or written motions at status conferences or in other hearings. Table 12 identifies the types of referrals most frequently made in the pilot counties. High referral rates may indicate "buy-in" or acceptance of the pilot project by those persons or agencies. The table clearly indicates that the court and its staff are the most frequent source for referring families to pilot projects, with attorneys, CASAs, Office of Family and Children, law enforcement and various other persons also making referrals.

Automatic Referrals. Counties may require that certain case types, or all cases of a particular type involving one or more pro se litigants, are

Table 12: Channels Through Which Families are Identified for Family Court

| | Johnson | Monroe | Porter | Putnam | Boone | Montgomery | LaPorte | Marion | Owen | Total |
|-------------------------------|---------|--------|--------|--------|-------|------------|---------|--------|------|-------|
| School | 1 | | | | | | | | | 1 |
| Prosecutor/staff | 2 | 2 | | | | | | | 1 | 5 |
| Law Enforcement | | | 13 | | | | | | | 13 |
| Probation | 3 | 4 | 9 | | | | 5 | | | 21 |
| CASA/service provider | 1 | | 18 | | | | | 4 | | 23 |
| Attorney | 32 | 7 | 1 | 6 | | | | | 2 | 48 |
| Litigant | 1 | 1 | | | | | | | | 2 |
| Office of Family and Children | 8 | 3 | 27 | | 9 | 3 | 1 | | | 51 |
| Clerk/Appearance Form | 2 | | 4 | | | | | | | 6 |
| Judge/Court Staff | 78 | 48 | 12 | 19 | 17 | 9 | 30 | 47 | 1 | 261 |
| Automatic Referral | | | | 13 | | | | | | 13 |
| Other | 1 | 1 | 6 | | | | | | | 8 |

automatically assigned to the family court project. For example, in Putnam County the judge's office staff automatically assigns new divorce or paternity cases involving pro se litigants to the family court facilitation project. This automatic referral expedites pro se litigation. Johnson County recently adopted a local rule to require that all felony, non-support cases be filed in the family court.

Appearance Forms. Table 12 reflects that a few multiple case families have been identified through Appearance Forms and/or identification by the clerk at case filing. Indiana Trial Rule 3.1(A)(6) requires the petitioning party (pro se or by counsel) to list the "caption and case number of all related cases in the Appearance Form." Additionally, court systems can adopt local court rules requiring that "all" or specific types of pending cases involving the petitioner be listed on the Appearance Form. The Clerk, the judge's staff, or family court personnel can review the Appearance Forms in new case filings to identify cases appropriate for the family court project. Both Marion and Porter Counties created by local rule specialized Appearance Forms requiring the petitioner to list all of the members of the petitioner's family and/or household. The forms also require the petitioner to list any of the following types of cases that are pending regarding the petitioner's family or other persons residing in the household: juvenile cases, probate cases, divorce cases, and crimes involving domestic violence, family violence or substance abuse.¹⁹

Judicial Inquiry. At a status or case management conference, or at the first court hearing, judicial officers can directly inquire of attorneys or pro se parties regarding the existence of other court cases involving the parties. As an example, judicial inquiry is regularly used in the Marion County Juvenile Division in CHINS cases. The judicial officer directly asks the attorneys and parties in CHINS cases whether the children are the subjects of a divorce or paternity case, and whether the case is an active or closed case. The reasoning for this questioning is to prevent the juvenile court from

entering custody, visitation, or service orders that are in conflict with already existing orders in a paternity or divorce case. Knowledge of these other cases also enables coordination of civil child support orders with juvenile court reimbursement orders for services or care provided to the child. The judicial officer also asks if the parents have a criminal case pending that is related to the CHINS case. This questioning enables the juvenile court to determine if the criminal court has entered "no contact" orders that will affect the parties involved in the CHINS case, and gives the juvenile court an understanding of the time frame for the criminal court's litigation.

There is no known ethical objection to this judicial inquiry. In fact many judges routinely ask if the parties have filed protective orders in other courts that should be transferred to the divorce case. The judge can make it clear to all persons present that identification of related cases is for the administrative purposes of determining (1) if and how the cases should be coordinated to avoid jurisdictional errors or inconsistent orders, or (2) whether the multiple cases should be assigned to the family court project. No evidence will be used from one case in another case unless certified copies of court records are properly offered into evidence, or the cases are assigned to the family court project and appropriate notice procedures are followed to permit the use of judicial notice under Family Court Rule 4.

Domestic Violence Police Reports and Child Protection Reports. The Porter County pilot project receives copies of all domestic violence police reports and child abuse and neglect reports. Project personnel review these reports and cross reference them to court records to determine if family members have other litigation pending that should be linked when and if new cases are filed.

Court Record Searches. Searching court records is one mechanism to identify if a particular person is involved in multiple cases in the court system, and/or to obtain needed court information on a

¹⁹ See Marion County Family Law Rules, App. A Appearance Form, Indiana Rules of Court-State (*West Group* 2002), p.551.

person who has been referred for family court programming. However, this is time consuming and often not accurate or comprehensive.

Many court systems have separate databases for criminal, civil, and juvenile cases which are not integrated, and slight variations in name spelling (and common surnames) make it difficult to identify the litigation of a particular person. Furthermore, children who are the subject of divorce custody litigation are sometimes not listed as parties in the pleadings and their names are not entered into the court databases. Therefore, the system has no means to link the child's new juvenile litigation to the pre-existing divorce custody case. Also, confidentiality of juvenile records has generally prevented the civil courts from easily accessing the juvenile databases.

While it may be too time consuming under current technology to conduct computerized record searches to discover all of the possible multiple case families, it is not unreasonable to develop policies for record searches on new case filings in a narrow range of case types. For example, record searches can be conducted by the Clerk who receives new filings, or the court staff when new cases are forwarded to the court offices. Some court systems already require the Clerk to link new criminal filings with pending or disposed cases on the same individual, so that all of the criminal cases involving the same defendant can be filed with the same judge. Clerks also link new protective order filings with already existing divorce or paternity filings involving the same parties. Because the family court project data indicates in Table 10 of this report that CHINS families have the greatest number of multiple cases, it may be appropriate and feasible to conduct record searches on the family members in all new CHINS filings. Another approach, particularly for smaller jurisdictions, is to conduct record searches on juvenile cases scheduled for hearing in the coming week. The searches can be conducted by existing court staff or by specially designated family court personnel.

c. Standardized Forms and Procedures

The pilot counties have developed policies and

forms for referring, selecting, and processing multiple case families through the court process. Some projects use more formal processes than others.

Referral or Identification Forms. Most counties have a written form that can be used to refer persons or families to the family court project or to identify appropriate families. Forms provide for a listing of known family names and cases, and reasons why family court assignment would be appropriate. Many projects find that judges and court staff make informal, oral referrals to family court personnel most frequently.

Profile/Screening/Recommendation Forms. Once a family member has been identified as a potential candidate for the family court project, a profile or screening form may be used to list court record searches and other information obtained to determine if the family's multiple cases should be assigned to the family court project. The form may include information about cause numbers, case types, judges, hearing dates, and any other significant information about the family's multiple cases, including at-risk factors relevant to child safety or stability. The same form may also include a recommendation for or against assignment to the family court project and recommendations regarding the following: model of case coordination, transfer of cases, combined status hearings, mediation/facilitation, and service programming. The recommendation is generally based on information obtained from the family's court files, rather than a personal intake interview with the parties unless the project county conducts such interviews.

Order for Assignment to Family Court Project.

Policies developed by each family court will indicate what judge or judges have the authority to assign cases to family court. A form order can be used to assign the cases to the family court project. The order will list the cause numbers of the involved cases, and may also vacate or set new hearing dates, and advise parties about the process and purpose of the project and the applicability of the Family Court Rules. Family Court Rules 3 and 4 require that the

court provide notice of the assigned cases and the opportunity to object to the assignment to family court within 10 days.

Case Transfers. If the *one family—one judge* or *bundling* model is used, all of the family’s eligible case files will be physically transferred to a designated judge. Necessary case transfer orders, notices and CCS (Chronological Court Summaries) entries will be completed. The cases may remain permanently in the new court or be transferred back to the court of origin when the family’s multiple litigation is resolved. Some pilot projects follow a policy of keeping the transferred cases in the same court, even when all pending litigation is completed and the family court proceeding is closed. This ensures that any future modification or contempt petitions will be heard by the same judge.

Case Management and Case Coordination Reports. If the *information sharing between multiple courts* model is used, a case management or case coordination report will be completed. This report may be an update or modification of the earlier completed screening/profile/recommendation form. The case management report may include the cause numbers, party and attorney names, hearing dates, and a brief summary of the significant orders for each of the family’s multiple cases. Some reports may also include summaries of orders from recently closed cases involving family members, particularly criminal rulings relevant to child or family safety. The report will be provided or made available to the judicial officers, lawyers, and pro se parties involved in the family’s multiple cases. Probation, Office of Family and Children, CASA, and other service providers will receive copies of the reports when they are parties to the litigation, or when case coordination requires their knowledge of this information. Reports may be updated before hearings, with copies provided to necessary parties and judges.

Case management or case coordination forms, or some variation thereon, can also be used in the *one family—one judge* model to ensure that the judge and the parties have complete and updated knowledge on the family’s multiple cases. However, this is labor intensive.

Family Court Roster. The Family Court Roster is a document that can be used in any case coordination model. The roster may list the names of family members and cause numbers assigned to family court, and may include upcoming hearing dates. The Roster may be distributed to all judicial officers and clerks, and updated on a weekly or monthly basis.

Family Case Data Form and Data Spreadsheets. The pilot projects maintain an information sheet on each family listing the data required by the Supreme Court. This data is transferred to a comprehensive spreadsheet to track the number of cases and families served by the project, at-risk social factors on each family, Family Court Rule usage, and other data.

C. Non-Adversarial Dispute Resolution

1. The benefits of Non-Adversarial Dispute Resolution in Family and Juvenile Law Cases

Promoting non-adversarial dispute resolution is one of the values of the Family Court Project. Out-of-court problem solving can save judicial time, particularly when one or more of the parties does not have an attorney and may come to court unprepared. Common experience indicates that parties in custody disputes are more likely to comply with dispositions they helped fashion and jointly agreed upon. The mediation process may help parties develop long term problem-solving techniques focusing on the best interests of the child. Non-adversarial dispute resolution can avoid the parental stress and hostility that occurs in the court room.

Research also indicates the potential benefits of non-adversarial dispute resolution in CHINS and termination of parental rights cases. This non-adversarial dispute resolution may variously be referred to as dependency mediation, facilitation, or family group conferencing. The 1999 "Guidelines for Public Policy and State Legislation Governing

Permanency for Children"²⁰ state the purpose of the national movement for dispute resolution in child protection proceedings:

Professionals who work with children and parents have become increasingly dissatisfied with customary reliance on the traditional adversarial system in resolving family-related disputes, including cases involving children's protection, placement, and permanent care. The power struggle in contested child welfare-related cases and hearings may foster hostility among the parties and dissipate money, energy and attention that could otherwise be used to solve problems cooperatively. Parties may become polarized, open communication may be discouraged, and there may be little investment in information sharing and joint problem solving. Children may suffer when adversarial tensions escalate and ameliorative services are delayed.

"Guidelines" at V-1

The Guidelines further state:

...most child abuse and neglect cases are resolved through informal settlement negotiations. Unfortunately, these settlements are often quickly made in courthouse hallways where the interests of all parties may not be carefully or fully considered. Hastily made agreements or stipulations made immediately prior to a hearing can do a disservice to both children and their families.

"Guidelines" at V-1.

2. Mediation and Facilitation Models of ADR

Several family court projects target non-adversarial dispute resolution as a significant need for low income and indigent families, and as a means to expedite the court process, particularly for

families without legal counsel.²¹ The family court projects primarily use two different models of dispute resolution: mediation and facilitation. Mediation is a process controlled by the Indiana Alternative Dispute Resolution (A.D.R.) Rules which define mediation in Rule 1.3 as "a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties."

Facilitation is an emerging method of non-adversarial dispute resolution.²² Facilitation is not defined in the Indiana case or statutory law. A.D.R. Rule 1.1 states that facilitation and mediation are both recognized "methods" of alternative dispute resolution, but A.D.R. Rule 1.2 provides that only mediation is controlled by the Indiana Alternative Dispute Resolution Rules. As practiced in the Indiana family courts to date, facilitation tends to be a flexible and informal model that uses a person identified as a facilitator or neutral to help parties (and other necessary agencies or service providers) reach resolution of contested issues and/or to fully disclose safety concerns and service options in juvenile law cases. The family court projects have used trained family law mediators to serve as facilitators in juvenile and domestic relations cases.

In addition to mediation and facilitation, the Family Court Project also considers judicial conferencing in multiple-case family situations or in complex custody cases a means of non-adversarial dispute resolution. Table 13 below notes the types of cases and models used for dispute resolution in the project counties. Several family court counties are

²⁰ Donald N. Duquett and Mark Hardin, "Guidelines for Public Policy and State Legislation Governing Permanency for Children," (Department of Health and Human Services, 1999), pp. V-1 through V-16. This publication is available through the National Clearinghouse on Child Abuse and Neglect Information at 1-800-FYI 3366 or the Web site of www.acf.dhhs.gov/programs/cb. See also Howard Davidson, "Using Dispute Resolution in Child Protection Cases" (ABA Center on Children and the Law, 1997).

²¹ Development of affordable non-adversarial dispute resolution programming is not unique to the family court counties. For example, Allen County conducted an extensive pilot program in dispute resolution in divorce custody cases, and the Allen County bench and bar have worked cooperatively to develop affordable mediation programming using volunteer attorneys.

²² Judge Charles Pratt in the Family Court Relations Division of the Allen Superior Court appears to be the first Judge in Indiana to utilize the "facilitation" label in juvenile law dispute resolution. Working with the National Council of Juvenile and Family Court Judges, Judge Pratt developed Model Court programming to conduct informal conferences outside of the courtroom to help parents, child protection agencies, and child advocates cooperatively discuss and agree on protection and treatment plans necessary to parent-child reunification. Tippecanoe County developed similar case conferencing which it also called "facilitation" in dependency and truancy cases. With the approval of the Indiana Supreme Court, Judge Pratt and the Indiana Judicial Center implemented in 2002 a "Learning Communities" committee to further address and standardize facilitation and other innovative court improvements. Judicial officers from two family court projects serve on the committee. The term "facilitation" is used more broadly in other states to include a variety of actions to help pro se parties and others accomplish various legal goals or processes.

planning dispute resolution programming for the future, but have not yet finalized programming details or funding arrangements.

referred party (usually by phone) to confirm financial need and willingness to mediate the disputed issues. Although the Coordinator indicates

Table 13: Non-Adversarial Dispute Resolution Programming

| | Paternity Custody and Visitation | Divorce Custody and Visitation | CHINS Termination of Parental Rights | Judicial Status/Settlement Conferences |
|------------|----------------------------------|--------------------------------|--------------------------------------|--|
| Monroe | Mediation | Mediation | | |
| Johnson | | | | Multiple Case Status Conferences |
| Porter | Mediation | Mediation | Planning | |
| Putnam | Facilitation | Facilitation | Facilitation | |
| Boone | Planning* | | | Multiple Case Status Conferences |
| Montgomery | Planning* | | | |
| LaPorte | | | Facilitation | |
| Marion | Planning Mediation | Planning Mediation | | |
| Owen | Facilitation | Facilitation | Facilitation | |

* Boone and Montgomery Counties are in the planning stages for non-adversarial dispute resolution and they have not finalized the mode of dispute resolution they will use or which case types will be eligible for the programming.

this seldom occurs, an attorney or party stating a strong or repeated unwillingness to resolve the dispute by mediation, may not be approved for the mediation program given the limitation of program resources. The approved party is directed by phone and written correspondence to contact the other party (or counsel for the party) to agree on one of the listed local mediators and to

3. Mediation in Divorce Custody Cases

The Porter County pilot project used family court grant funds and a Court Improvement Project grant in 2000 to develop an innovative program to provide mediation to low income, at-risk families in divorce custody cases. Many of these families were pro se. The initial goal was to use mediation to prevent troubled families in divorce litigation from escalating into child abuse and neglect, or into delinquency situations. A portion of the grant funds were used to train local attorneys, family court staff members, and social workers from the local Family and Youth Service Bureau in family law mediation.

This is how the Porter family court divorce mediation program works. Judicial officers may refer pro se or low income families to the mediation program as they deem appropriate. Attorneys may request the program for their clients who are indigent. The Family Court Coordinator generally relies on the knowledge of the judicial officers and attorneys with regard to the financial eligibility of families referred, but additionally talks with the

schedule the mediation date directly with the mediator. The Family Court Coordinator takes additional time with pro se parties to ensure that they understand the purpose, process and consequence of mediation. When one of the parties is not represented by counsel, the Family Court Coordinator relies on the integrity and ethics of the attorney of the represented party to ensure that the mediator selection process is done fairly. To date all parties have been able to select a mediator without using the formal striking process or other complications. If the parties have attorneys, the attorneys may attend the mediation or agree to be bound by any agreements reached by their clients if they choose not to attend.

In the Porter County Program when an agreement is reached and thoroughly reviewed with the parties, the mediator generally has the parties sign the agreement generated on a lap top computer, or notes thereof, before the parties leave the mediation session. The mediator generally takes responsibility to draft the document, obtain signatures, and file the document with the court. This avoids substantial

delays and the possibility that pro se parties might not file the agreement with the court.

Monroe County initiated in 2003 a divorce mediation program for low income parties utilizing volunteer students from the Indiana University School of Law and volunteers from the Community Conflict Resolution Project of Bloomington. This program is an extension of the Monroe County paternity mediation program discussed in the next section.

4. Mediation in Paternity Custody Cases

In 2000, the part-time Porter County Family Court Case Manager collaborated with the Valparaiso School of Law to use students and local volunteer attorneys to help families resolve custody and visitation issues in paternity cases. The program enables low income, and most often pro se parties, to work with a neutral person in agreeing on an appropriate child custody and visitation arrangement. The program is known as the "paternity clinic."

The paternity clinic is scheduled for the dates and times that the court conducts hearings on paternity establishment and related child support issues. After the hearing establishing paternity and child support amounts is completed, the judicial officer invites the parties to meet immediately with a supervised law student or a volunteer lawyer to resolve remaining custody, visitation, or other issues related to the paternity case. The parents discuss their options and needs with the assistance of the volunteer, and their agreements are codified in a form order which the parties present to the judge that same day for approval. The process allows parents to more fully participate in the determination of the custody and visitation orders and gives them greater ownership and commitment to the orders. Highly adversarial cases may be referred for additional clinic sessions, or may not be appropriate for this process.

The Indiana University School of Law at Bloomington joined with the Monroe County

family court project in 2002 to initiate similar programming in which families mediate issues arising in their paternity cases. Law students and volunteers from the Community Conflict Resolution Project meet with families at the courthouse to help them mediate original custody and visitation orders once paternity and support orders have been established. Law students are supervised by the Director of the Child Advocacy Clinic, Clinical Law Professor Amy Applegate or by the family court coordinator. As appropriate, the project may also include mediation of petitions to modify or contempt actions.

5. Facilitation in CHINS, Termination of Parental Rights, Pro Se Custody, and other Intra-Family Litigation

In July of 2000, Putnam County received a Court Improvement Project grant to develop a form of non-adversarial dispute resolution for pro se custody cases, CHINS and termination of parental rights cases, and other intra-family litigation. Putnam County calls this process facilitation. Owen County began providing facilitation services in 2002.

The purpose of facilitation in custody and other family law disputes is to help the parties obtain a resolution outside of the courtroom to the single or multiple cases involving the family. In CHINS cases or other complex custody disputes the facilitation meeting may also include extended family members, child protection case managers, child advocates, and service providers. Facilitation in CHINS cases may have the additional goal of obtaining full disclosure between the parents and agencies on issues affecting child safety, case planning, and permanency. Facilitation has also been used in Putnam County to jointly resolve the criminal and CHINS cases involving the same child victim.²³

This is how facilitation works in Putnam and Owen Counties. The part time Project Administrator in each county receives referrals from the court or parties, conducts an intake interview

²³ See section B.2.e. above in this chapter for further discussion of non-adversarial dispute resolution as a mechanism to coordinate CHINS and criminal cases involving the same child victim, and Wisconsin model project on the use of mediation to jointly resolve criminal and civil child protection cases.

with the parties, researches court databases to identify if family members have other pending litigation to be addressed or joined in the facilitation, and arranges for one of the family law trained mediators to conduct the facilitation meeting. The Project Administrator gives the facilitator copies of court files, and information collected from the intake interview and court record searches. This information is shared with the parties and counsel as appropriate to due process. At the facilitation meeting the facilitator seeks to clarify the issues and help the parties reach agreements consistent with the safety and best interest of the children. In CHINS and termination of parental rights facilitations, the format approximates more of a conference as the facilitator tries to help the parents and all other participants clearly express and discuss their concerns and known facts. Agreements are drafted on a lap top computer, signed before the parties leave the meeting, and forwarded by the facilitator to the court for approval.

Although most of the custody disputes involve pro se parties in the Putnam County program, attorneys of eligible clients are welcome to attend the facilitation meeting. Alternatively, an attorney for a low income party can waive his presence at the facilitation meeting and waive any right or obligation to challenge the agreement, or the attorney can specify a phone number where he can be reached during the facilitation meeting to review any agreement obtained. In CHINS and termination cases parents are represented by counsel in the facilitation meeting, and the other parties may have counsel or access to counsel as needed for consultation prior to signing agreements.

Facilitation is similar to mediation, but may vary from traditional mediation in significant ways. First, the Alternative Dispute Resolution (A.D.R.) Rules do not technically apply to facilitations, although family court projects may indicate in policies and procedures that the Rules will serve as guidelines. Since A.D.R. Rule 2.11 on confidentiality does not technically apply to facilitations, it is important for the family court projects to develop policies or local rules that specifically define and address

confidentiality. With regard to confidentiality, Putnam County's local court rules state that the "information shared in a facilitation meeting is confidential, with the exception of information regarding child abuse or neglect and /or intent to cause immediate or future physical harm to another person." The Putnam County local rules also state that "information shared in the facilitation meeting shall not be used as evidence in any court action." Second, facilitations may be more informal and flexible than traditional mediation. Third, facilitation (particularly as practiced in CHINS cases) tends to focus on the safety and well being of the child, whereas traditional mediation may allow parents more freedom to enter into agreements that best fit the parents' needs and desires.

The LaPorte County pilot project uses facilitation in CHINS cases. The family court coordinator is a trained family law mediator and serves as the neutral in conducting facilitation meetings. The LaPorte Juvenile Court sets facilitation meetings as standard practice in the early stages of CHINS case for the following purposes: (1) to ensure that all parents, Office of Family and Children case managers, child advocates, and service providers are fully aware of the child protection issues and service needs of the family, and (2) to increase the involvement (and commitment) of the parents in designing a permanency plan in the best interest of their child, and to avoid contested hearings. LaPorte County also uses facilitation meetings at the permanency stage of CHINS cases. Prior to the CHINS facilitation meeting, the family court staff member conducts a court record search on the child, sibling, parents, or other significant adults in the household. This information regarding current and prior court cases involving family members is used in the facilitation meeting to ensure informed decision making and to avoid conflict with other existing court orders.

6. Special Considerations with Pro Se Families

A mediation or facilitation meeting involving one or more pro se parties may have some unique

factors, and present some particular challenges when the mediator for the pro se parties is a lawyer. Whereas a mediator in a traditional mediation will rely on the attorneys for the parties to give legal advice and to review/draft the agreements or court orders, this is not available in pro se situations. Therefore, it is critical that the mediator advise the pro se parties that he/she is not serving as legal counsel for any party and that the mediator cannot give legal advice. However, the mediator may need to inform the parties regarding legal options and legal issues that must be addressed in order to ensure that the final agreement is comprehensive. In pro se cases the mediator may use a check list to be sure that all custody, visitation, and child support issues are addressed. Also the mediator in pro se cases will act as a scrivener (rather than as a lawyer) in reducing the agreement of the parties to writing and in drafting the corresponding orders, since no attorney is available to do this on behalf of the parties. The mediator may need to stop a mediation meeting with pro se parties if it is clear that one or both parties need technical legal advice or there is a power imbalance between the parties.

It may be time effective to have family court personnel conduct an intake interview with pro se parties prior to the mediation or facilitation meeting. The interview can screen for inappropriate referrals, which might include parties who indicate an unwillingness to participate in the mediation in good faith or parties who have domestic violence issues. The intake interview can also ensure that the parties understand the purpose and consequences of the mediation, and that they are advised to bring necessary financial and other documents for the mediation meeting.

7. Costs and New Legislation to Fund ADR Programming for Low Income Families

The costs and resources for mediation and facilitation programming vary. Some counties utilize

family court grant money, in addition to other resources. The Porter County divorce mediation program pays local attorney mediators \$95 per hour, with a cap of \$500 per case. Also, trained family court staff members provide mediation as part of their work responsibilities, and Family and Youth Service Bureau social workers provide mediation services at little or no cost. The Porter County Paternity Clinic utilizes grant funds to reimburse a local attorney to supervise the law students when needed. Trained family court personnel also recruit and coordinate volunteer attorneys and law students to conduct mediations, and conduct mediations themselves when appropriate. The Monroe County mediation programs have no specified funding and are primarily the volunteer effort of the law school and community conflict resolution group, coordinated through the family court personnel. The LaPorte County facilitation project utilizes its family court coordinator to conduct CHINS facilitations. The Putnam County facilitation program pays local attorneys at a rate of \$100 per hour. The Putnam program has been funded in the past by Court Improvement Project grants, local foundation grants and a grant from the Office of Family and Children. The Putnam County facilitators discuss party contribution for mediation costs with all parties. The parties generally agree to reimburse the county according to their financial ability, and these reimbursement agreements are placed in the court order.

The family court projects are expected to utilize the 2003 legislation that allows counties to collect an additional \$20 Alternative Dispute Resolution (ADR) fee in divorce and paternity case filings, to subsidize the cost of dispute resolution programming for low income families.²⁴ To be eligible to collect the ADR fee, the county must submit an ADR Plan for approval by the Division of State Court Administration in compliance with standards and guidelines. The ADR Plan legislation

²⁴ See IC 33-4-13 and Indiana Alternative dispute Resolution Rule 1.11 for details of ADR Plan and collection of ADR fee. See also the Web site to reach the Indiana Judicial Center, Domestic Relations Committee (www.IN.gov/judiciary) for standards and guidelines for ADR Plan.

requires that litigants shall make a copayment for services in an amount determined by the court based on the litigants' ability to pay.

8. Court Conducted Non-Adversarial Dispute Resolution: Status Hearings and Settlement Conferences

Although most of the dispute resolution programming focuses on out-of-court, non-judicial activity, it is important to recognize that judicial case conferences or status hearings in the courtroom can be an effective means of non-adversarial dispute resolution. Boone and Johnson Counties regularly conduct combined status hearings in multiple case family litigation. These judicial status hearings can resolve one or more of the contested issues.

D. Specialized Services

Early in the implementation of Phase 1 of the Family Court Project, the pilot counties identified serious unmet needs for families in the court system. They particularly noted that at-risk families in divorce, paternity, and protective order cases do not generally have access to the "safety net" services available through juvenile court, juvenile probation, or the Office of Family and Children. Also, courts lacked funds or programming to monitor high-risk families for compliance with custody orders related to child safety issues. Several pilot projects implemented a wide range of specialized programs to address these needs. The projects also implemented programming to assist pro se families to process through the court system more efficiently and effectively.

It is significant to note that some of this service programming is not unique to the family court pilot projects. It is based on national models or already existing programs in Indiana's juvenile and divorce courts. The family court pilots have become experts at borrowing the ideas of others. The Allen Superior Court Family Relations Division, although not a pilot family court project, has been particularly generous in educating and mentoring pilot projects in the development of resource rooms and facilitation programming.

Experience has shown that a family court project can serve as a catalyst to develop, spin off, or incorporate needed programming that does not exist elsewhere in the community.

1. Service Referral and Resource Rooms

Service referral programming generally means that the family court staff has developed a relationship with community service providers and helps parties access those service providers on a court ordered or voluntary basis. The referral process may involve a range of services. It may include explaining court orders to pro se or special needs parents, giving a family member the contact names and phone numbers for available service providers, actually making the service appointment for the family, negotiating to obtain an affordable service or available appointment time for the family, and/or follow-up calls and reports to advise the court and parties whether services were obtained.

Resource rooms are usually physical locations in the court house or a court annex where families can obtain helpful information, which may include brochures on available services with necessary contact and cost information, pro se pleading forms, and other information. The resource room may be completely "self help" or may be staffed by volunteers or court staff to assist families in utilizing the resources and/or scheduling needed appointments. A resource room may be particularly helpful for indigent families without easy access to phone service or a permanent address for return calls.

Johnson County's family court project can obtain services for its at-risk families through ACT (Access Coordination Team). ACT is an independent community organization which includes representatives from mental health, Juvenile Probation, Office of Family and Children, CASA, and schools. It serves as a clearinghouse to maximize referrals to existing services for juveniles and families and to identify gaps in service provision or programming. Additionally, the paid staff of the ACT Screening Team screens families and juveniles, and develops and monitors service

plans to resolve problems. The family court project can refer up to three, at-risk families to the ACT masters degree level counselor at any time. Although ACT's staffing services have always been available to families regardless of the existence or type of formal court involvement, prior to the family court project there was no direct referral method for families involved in divorce or paternity cases who were not also involved with the Office of Family and Children or Probation.

Monroe County's family court makes referrals to, and utilizes the services of the community service provider collaboration referred to as Wrap-Around. The family court coordinator also makes direct referrals to service providers for families.

The Porter County pilot project implemented its social services programming by informally providing service referrals for project families on an "as needed" basis. Funding was eventually obtained to provide more structured aid to at-risk families. The Community Access Center was created by the pilot project in coordination with other community agencies and the probation department. The Center is located outside the courtroom at the Juvenile Services Center two days a week and on the first floor of the Valparaiso courthouse on two different days. The family court personnel at the Center provide "mini" needs assessments and service referrals to families involved in divorce, paternity, and delinquency cases. Higher risk families may receive intense case management services and home visits when needed. Courts and attorneys can refer families to the Center, or families can request the services on their own.

LaPorte County has developed a Judicial Assistance program to provide assistance to judicial officers in child custody cases. For example, the judge may direct the family court personnel to arrange for custody evaluations, mental health evaluations, drug testing, or out-of-state CASA supervision for indigent and/or pro se families who are unable to access the needed services themselves. The family court personnel also provide some monitoring for order compliance with high risk families.

Marion County is currently developing the funding and structure for a service referral program for at-risk families in civil custody cases.

Putnam County maintains a resource room in conjunction with its Pro Se and protective order programs, discussed further below in this section.

2. Direct Services Case Management and Truancy Programming

The Monroe County pilot project uses a case management model for single case families with complex or chronic custody and safety concerns. The Family Court Coordinator conducts separate intake meetings with the family members, and conducts follow-up meetings on a regular basis to help them resolve minor disputes, get needed services, and to ensure that family members comply with court orders. Written case reports are prepared as requested by the court and hearings are scheduled as needed. Direct service case management promotes order compliance and provides a measure of non-judicial supervision for families with domestic violence, mental health, and drug issues affecting the safety of children. Case management meetings may reduce the number of modification and contempt hearings and help families participate directly in problem solving. Porter County similarly provides direct services case management to select families through its Community Access Center as discussed in the section immediately above.

Many of the pilot counties already have outstanding truancy programs through their juvenile courts and probation departments. Porter County annexed its truancy programming into its family court pilot project to ensure a family approach to school problems. Project Attend and other school related programming focuses on working with families to reduce truancy and other at-risk situations. Families can receive ongoing case management services to address housing and financial issues, and a broad array of problems that impact the child's school situation. The goals of this school programming are early identification of problems and providing help to dysfunctional families, before school problems escalate to more

detrimental behaviors.

In 2003, the LaPorte family court project began assisting the "School Judge" in gathering court information about the students in Project Extended Day and the Michigan City Alternative School Program. This information gives the Judge a better understanding of the family's previous and current involvement with the justice system, and a list of the other programs and treatment the family has received in the past.

3. Protective Order Services

The recent overhaul of Indiana's protective order legislation resulted in an influx of new cases with pro se litigants and some uncertainty about the filing and coordination of protective orders. A protective order can be the family's first experience with the court system, and parents may need assistance to initiate divorce or paternity pleadings that will lead to permanent custody or visitation arrangements for their children.

The Putnam County family court project has implemented a new program to assist the court and families in certain protective order cases. The program applies only to cases in which an emergency protective order has been issued, but at a party's request or as required by law, a subsequent hearing has been set within thirty days to address custody, visitation, and child support issues. It is generally anticipated that the program will only be utilized when one of more of the parties are pro se.

The program uses grant funding to pay an attorney to conduct an intake meeting with the parties before the protective order hearing. The attorney does not serve as counsel to either party. The purpose of the pre-hearing intake is to make appropriate referrals to the IV-D child support enforcement prosecutor if the paternity of a child born out of wedlock has not been legally established, or to refer a parent to pro bono legal programming to initiate divorce proceedings. Referrals can also be made to domestic violence programming or shelters, or to counseling or financial assistance programs. The intake meeting helps the pro se parties outline what they want to

request to the court regarding custody, visitation or support issues. Given the domestic violence issue, parties are separated for the intake meeting.

The intake meeting is not a mediation, and does not address the appropriateness of the protective order. The intake meeting is expected to take 15 to 20 minutes. After the intake meeting, the parties appear before the judge for the protective order hearing. The intake attorney does not attend the hearing.

The Putnam County protective order programming is the joint effort of the judges, local attorneys who serve as facilitators for the family court, the Family Court Project Administrator, and the Family Support Center that serves victims of domestic violence. Grant funding was obtained for this new programming from the Putnam Community Foundation based on the identified need to help at-risk families in domestic violence situations obtain preliminary and permanent custody, support and visitation orders, and to provide a mechanism to refer at-risk families to needed services. The program should expedite the court process and the judge will not be burdened in the courtroom with providing social services information and referrals for families.

Marion County is using its pilot family court project to assist in the coordination and standardization of the protective order process. The family court project judges hosted a meeting to review the processes used by the clerks and judicial officers doing the bulk of the protective orders in the Protective Order Court, and the processes used by the civil judges who handle the protective orders involving existing paternity and divorce cases. The Family Court Coordinator is working with the clerks in the Protective Order Court to memorialize their procedures and develop policies for coordination between the courts. The goal is to be sure that cases are not lost between the cracks and that the clerks and the judges of all the courts (as well as local attorneys and citizens) know what courts provide what services with regard to protective orders. The coordination should ensure that emergency protective orders are properly

transferred to, and set for mandatory thirty day hearings in the civil courts when related divorce or paternity cases are discovered or subsequently filed.

4. Pro Se Services

The above discussed service referral, resource room, and protective order programming is specifically geared to assist pro se litigants. However, additional self help programming is evolving in the family court pilot projects. The Putnam County pilot project has recruited local attorneys to volunteer for the Pro Se Desk to answer basic legal questions and provide available forms to citizens with family law issues. The Pro Se Desk is available twice a month for two hours at lunch time.

The program has some similarity to the Marion County "Ask a Lawyer" project and the statewide "Talk to a Lawyer Today" project. Putnam County has consulted with Anthony Zapata from the State Pro Se Project to clarify the limitations on lawyers and lay people in answering legal questions, and Mr. Zapata conducted an in service training in the county. The volunteers utilize the resource room in the court house to provide brochures or contact information for needed services, and to help indigents obtain pro se legal forms through the Indiana Judiciary Web site www.in.gov/judiciary.

